

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	CC Docket No. 95-20
Computer III Further Remand Proceedings)	
Bell Operating Company)	
Provision of Enhanced Services)	
)	
1998 Biennial Regulatory Review)	CC Docket No. 98-10
Review of Computer III and ONA)	
Safeguards and Requirements)	

REPLY COMMENTS
OF
AMERITECH

I. INTRODUCTION

The Comments generally support the Commission's tentative conclusion in the Further Notice of Proposed Rulemaking¹ that today's information services environment is sufficiently competitive to support continued reliance on nonstructural safeguards for Bell Operating Company ("BOC") provision of intraLATA information services. The Commission should confirm that tentative conclusion, and also reject attempts by some Information Service Providers ("ISPs") to secure the benefits granted to telecommunications carriers by Section 251 of the Act while shirking the corresponding burdens imposed by the Act.

¹ In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket Nos. 95-20, 98-10, Further Notice of Proposed Rulemaking, rel. January 30, 1998 (hereinafter "FNPRM").

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II. NO CREDIBLE EVIDENCE SUPPORTS THE REIMPOSITION OF STRUCTURAL SAFEGUARDS ON THE BOCs.

Some parties² ask the Commission to ignore the indisputable fact that the 1996 Act and rapid technological change have completely changed the competitive telecommunications landscape, and to reimpose upon the BOCs the artificial handicap of structural separation which the Commission long ago found should be removed.³ Those urging a return to the heavy-handed regulatory regime of the past fail to submit any credible evidence that either cross-subsidy or discrimination have in fact occurred. MCI once again dusts off the threadbare "Georgia Memorycall" case,⁴ while Compuserve alleges "bad acts" that, ironically, were brought to light by the very nonstructural safeguards which it now claims are ineffective in detecting anticompetitive conduct.⁵ AirTouch guts its own argument by completely misinterpreting the Commission's CEI requirements.⁶

² Comments of LCI, at 8-10 (stretching its pending separate subsidiary proposal for BOC interLATA services to cover information services as well) ; Comments of CIX, at 14-15 (echoing LCI's proposal); Comments of MCI, at 27 (claiming incorrectly that "California III has already returned the industry to structural separation"); Comments of Compuserve, at 7-9 (arguing that a return to structural separation would minimize the need for "difficult and arbitrary cost allocations"); Comments of GSA, at 3-4.

³ Computer III Phase I Order, 104 FCC 2d 958 (1986).

⁴ Comment of MCI, at 47-9 (citing In the Matter of Investigation into Southern Bell Telephone Company's Provision of Memorycall Service, Docket No. 4000-U (Ga. PSC, June 4, 1991).

⁵ Comments of Compuserve, at 7-9. Compuserve points to FCC cost allocation audits that resulted in findings of "no ratepayer harm" (In the Matter of Ameritech, AAD 95-75, Order (rel. June 23, 1995), Concurring Statement of Commissioner Andrew C. Barrett) and no pattern of "systematic abuse". In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services, CC Docket No. 96-149, NPRM (rel. July 18, 1996), at ¶ 146).

⁶ AirTouch incorrectly claims CEI dictates that the "pager notification" feature of Ameritech's unregulated Voicemail service must be made to operate with AirTouch's paging service (Comments of AirTouch Paging, at 1-3). As a Commercial Mobile Radio Service (9 FCC Rcd 1411 (1994), at ¶ 1100), paging is obviously not a "basic network service" to which the CEI requirements apply. 104 FCC 2d 958 (1986), at ¶ 131; see also 10 FCC Rcd 1724 (1995), at ¶ 21. In fact, because paging cannot even be provided by a BOC (a separate subsidiary is required by the Commission's rules; see 47 C.F.R. § 20.20[a]), the concept of CEI is completely inapplicable to the service.

Much of the material filed by those arguing for a return to structural separation is simply irrelevant to the issues in this proceeding. Various parties clutter the record with arguments regarding the pending BOC Petitions for relief under Section 706 of the Act,⁷ BOC applications for interLATA authority under Sections 271 and 272,⁸ ILEC resale obligations,⁹ and reciprocal compensation issues.¹⁰ This material should be disregarded by the Commission because it is completely unrelated to the topics raised in the FNPRM.

Despite the complete lack of evidence of abuse and much speculation on the “potential” for anticompetitive BOC conduct,¹¹ the fact remains that since the structural separation requirement was lifted over a decade ago, no formal FCC complaint has been filed by any party alleging access discrimination by a BOC against a non-affiliated ISP. It is also undisputed that, despite the much-alleged potential for abuse, the BOCs have not in any sense dominated the information services marketplace.¹² The record clearly demonstrates that structural separation remains an unnecessary, unsuitable regulatory mechanism in today’s highly competitive, post-1996 Act information services marketplace. All the unsubstantiated suggestions to the contrary should be dismissed by the Commission.

⁷ Comments of MCI, at 24-8; Comments of Time Warner at, 7-9; Comments of Worldcom at 10-12.

⁸ Comments of ALTS, at 13-16; Comments of LCI, at 5-8; Comments of MCI, at 5-6.

⁹ See, e.g., Comments of Connectiv, at 1-3; Comments of TRA, at 8-10.

¹⁰ See, e.g., Comments of ALTS, at 16.

¹¹ Comments of LCI, at 25; Comments of MCI, at 7-11, 44-9, 53-6; Comments of Compuserve, at 6-7; Comments of Ad Hoc, at 4-5; Comments of ADT, at 3-8; Comments of AirTouch Paging, at 1-3; Comments of GSA, at 5-6; Comments of ITAA, at 26.

¹² See, e.g., Comments of Bell Atlantic, at 4-7, 9.

III. ISPs SHOULD NOT RECEIVE SECTION 251's BENEFITS WITHOUT ASSUMING THE CORRESPONDING OBLIGATIONS.

Section 251 of the 1996 Act confers certain rights upon all telecommunications carriers, including the rights to negotiate with Incumbent Local Exchange Carriers ("ILECs")¹³ for interconnection,¹⁴ access to unbundled network elements,¹⁵ collocation,¹⁶ and resale services.¹⁷ This section of the statute also specifies a series of obligations that must be assumed by those who would receive these benefits.¹⁸ Under Congress' scheme as embodied in these provisions of the Act, parties seeking the rights granted by Section 251 must qualify as "telecommunications carriers,"¹⁹ thus assuming at a minimum the obligations of interconnection, interoperability²⁰ and universal service.²¹

Some ISPs now ask the Commission to ignore the balanced structure of Section 251, demanding to obtain the rights accorded to telecommunications carriers by

¹³ 47 U.S.C. § 252(h).

¹⁴ 47 U.S.C. § 251(c)(2).

¹⁵ 47 U.S.C. § 251(c)(3).

¹⁶ 47 U.S.C. § 251(c)(6).

¹⁷ 47 U.S.C. § 251(c)(4).

¹⁸ Comments of US WEST, at 24-5; Comments of USTA, at 24-5; Comments of SBC, at 23-5.

¹⁹ A telecommunications carrier is defined in the Act as "any provider of telecommunications services" (except aggregators). 47 U.S.C. § 153(44).

²⁰ 47 U.S.C. § 251(a)(1), (2).

Section 251 without assuming the corresponding obligations.²² Such a result would subvert Congress' purpose in coupling these rights with specific duties. Indeed, the very rationale for Section 251 -- promoting local exchange competition²³ -- is inapplicable to the information services marketplace, which the Commission has correctly found to be extremely competitive.²⁴

Given the robust state of the marketplace, it would not be prudent policy for the Commission to upset the Act's statutory scheme for the sole benefit of the small set of ISPs who, for whatever business reasons, have not yet elected to align with telecommunications carriers.²⁵ The Commission is charged with protecting competition, not individual competitors. As Chairman Kennard recently noted: "I don't pick winners. I don't pick losers. I make sure the field is level and the goalposts are the same height..."²⁶

²¹ 47 U.S.C. §§254(b)(4) and (d) require contribution by all telecommunications carriers who provide interstate telecommunications services.

²² Comments of Helicon OnLine, at 5-6; Comments of ADT, at 6-8; Comments of Metro One, at 11-12; Comments of Ad Hoc, at 9-16; Comments of CIX, at 3-4, 7-10, 12-14 (seeking new collocation rights beyond those available to telecommunications carriers under the Act); the Commission has already rejected arguments that it should order collocation for enhanced services equipment. 11 FCC Rcd 15499, at ¶ 581.

²³ FNPFM, at ¶¶ 18-19.

²⁴ FNPRM, at ¶ 36. see also Comments of Bell Atlantic, at 4-9 Attachment A ("Hausman Affidavit"); Comments of SBC, at 3-4; Comments of US WEST, at 20-22.

²⁵ The experience of NorthPoint Communications, Inc. demonstrates that "any ISP or non-ISP has the ability, like NorthPoint and other companies, which have recently obtained CLEC status, to obtain certification as a carrier" Comments of NorthPoint, at 2. (VERIFY CITE).

²⁶ Speech by FCC Chairman William E. Kennard, Legg Mason Investor Workshop, Washington, D.C., March 12, 1998.

IV. CONCLUSION

For the reasons set forth above, the Commission should implement its tentative conclusions, eliminate the ONA and CEI regimes as applicable to BOC provision of information services, and reject the self-serving pleas of some ISPs who seek to gain the benefits of Section 251 while avoiding the corresponding obligations.

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Dated: April 23, 1998

CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that a copy of Ameritech's Reply Comments has been served on the parties listed on the attached service list, via first class mail, postage prepaid, on this 23rd day of April, 1998.

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